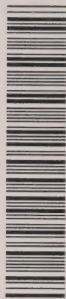


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Proposed Amendments to the Law Related to Insurance: Consultation Draft

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Minister of Financial Institutions



Prepared by the Ministry of Financial Institutions

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EXPLANATORY NOTES

This document sets out proposed amendments to the *Insurance Act* and complementary amendments to several other statutes. It also sets out the proposed *No-Fault Benefits Schedule* which will be a regulation to which the *Regulations Act* applies.

The purposes of the proposed statutory amendments are to provide for a no-fault benefits scheme to replace the current Schedule C; to provide for direct compensation from an insured's own insurer for property damage caused by third persons; to provide an incentive for persons to obtain insurance; to strengthen the regulatory system governing insurers in Ontario; to augment the means of enforcing the *Insurance Act*; to increase consumer protection respecting automobile insurance; to eliminate the corporations tax payable in respect of insurance for private passenger automobiles; to permit the naming of persons as "excluded drivers" under contracts of automobile insurance; and to improve the collection of statistical data.

Some administrative provisions of the *Insurance Act* are updated.

The principal provisions of the proposed statutory amendments are as follows:

SECTIONS 11, 16, 17, 21 to 23, 25 to 28, 30, 33 to 41 and 46 to 51. Provision is made for a new no-fault scheme to replace the existing Schedule C. Access to traditional tort remedies will be restricted to cases of death and cases of permanent serious disfigurement or impairment. Complementary amendments are made to other Acts.

SECTION 31. Insureds will collect damages from their own insurers for property damage caused by insured third parties.

SECTIONS 1 to 4, 7, 15, 17 and 42. Among the administrative changes made in order to update the *Insurance Act* are the appointment and powers of the Superintendent and deputy superintendents of insurance, the protection of Crown employees from liability in civil proceedings, and record-keeping requirements for the Superintendent. Changes to the regulation-making powers of the Lieutenant Governor in Council are complementary to other amendments to the Act.

SECTIONS 2, 8, 10, 16 and 45. Comprehensive powers to enforce the *Insurance Act* are consolidated in a new Part XX of the Act. An offence is created respecting the obstruction of examinations made under the Act. Increased penalties are provided, and the limitation period for legal proceedings under the Act is extended.

SECTIONS 5, 6 and 8. Among the administrative provisions made in order to streamline enforcement of the *Insurance Act* are authorization to the Superintendent to issue certificates that may be used in evidence in legal proceedings, and provisions governing service of documents.

SECTIONS 8, 12, 13, 14, 44 and 45. The regulatory system is strengthened. The Superintendent is empowered to collect information from insurers through annual and interim returns filed by insurers, to make specific inquiries to, and periodically to examine the condition of affairs of, insurers. The powers of persons conducting examinations under the Act are set out. The duty to furnish information is clarified. The Superintendent may issue compliance orders.

SECTIONS 9, 19, 20, 22, 24 and 43. Consumer protection measures respecting automobile insurance are augmented. The Superintendent is authorized to publish information about insurers that is in the public interest. Insurers are required to supply prescribed information to applicants for insurance and to insured persons. The category of "unfair acts and practices" by insurers is expanded.

SECTION 32. Insureds will be required to provide their insurer with details of any accident in which more than \$750 in property damage is done. This will improve the collection of statistical data by insurers.


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SECTION 33. Under the proposed subsection 231 (5a) of the Act, uninsured motorists will be unable to recover for property damage. This will encourage compliance with the *Compulsory Automobile Insurance Act* and other statutes which require insurance.

SECTION 48. The tax payable under subsection 66 (1) of the *Corporations Tax Act* in respect of insurance for private passenger automobiles is eliminated.

SECTION 49. OHIP's right of subrogation will be eliminated in the case of automobile accidents.

SECTIONS 17, 18, 25, 26, 29, 33, 34, 47 and 50. Provision is made for an endorsement to a contract of automobile insurance naming an "excluded driver". If an excluded driver drives an automobile that is otherwise insured under the contract, the automobile is no longer insured, and persons otherwise insured under the contract are no longer insured, although they are entitled to medical and accident benefits under the *No-Fault Benefits Schedule*. Complementary amendments are made to other Acts.



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Statutory Amendments

1.—(1) Paragraph 39 of section 1 of the *Insurance Act*, being chapter 218 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

39. “Minister” means the Minister of Financial Institutions.

(2) Paragraph 62 of section 1 of the said Act is repealed and the following substituted therefor:

62. “Superintendent” means the Superintendent of Insurance.

2. Sections 2 and 3 of the said Act are repealed and the following substituted therefor:

2.—(1) The Lieutenant Governor in Council shall appoint a Superintendent of Insurance who shall carry out the duties and exercise the powers of the Superintendent under this Act and every other Act that assigns duties to or confers powers on the Superintendent. Superintendent

(2) The Lieutenant Governor in Council may appoint one or more deputy superintendents of insurance to perform such duties and exercise such powers of the Superintendent at such times and in such manner as the Lieutenant Governor in Council may order. Deputy superintendent

3.—(1) For the purpose of exercising the powers and performing the duties of the Superintendent under this Act or any other Act, the Superintendent has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions. Powers to summon witnesses and require production

(2) In pursuance of the Superintendent’s duties, the Superintendent may require to be made or may take and receive Power to require evidence

affidavits or depositions and may examine witnesses upon oath.

Employment
of
stenographer

(3) The evidence and proceedings in any matter before the Superintendent may be reported by a stenographer who has taken an oath before the Superintendent to report faithfully the same.

3. Subsection 6 (1) of the said Act is repealed and the following substituted therefor:

Protection
from
personal
liability

(1) No action or other proceeding for damages shall be instituted against the Superintendent, any officer or employee of the Crown acting under the authority of the Superintendent, or any person appointed under this Act, for any act done in good faith in the execution or intended execution of the person's duty or for any alleged neglect or default in the execution in good faith of the person's duty.

Crown
liability
R.S.O. 1980,
c. 393

(1a) Notwithstanding subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

4. The said Act is amended by adding thereto the following section:

Records

7a. Records required by this Act to be prepared and maintained by the Superintendent may be in bound or loose-leaf form or in photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in an accurate and intelligible form within a reasonable time.

5. Subsections 8 (2) and (3) of the said Act are repealed and the following substituted therefor:

Superin-
tendent may
issue
certificate

(2) The Superintendent may issue a certificate,

- (a) stating that on a stated day a person was or was not licensed under this Act, or that the licence was renewed, suspended, revived, revoked or cancelled on a stated day;
- (b) stating that a copy of, or extract from, a document or thing in the custody of the Superintendent is a true copy of, or extract from, the original;

- (c) stating the amount payable to the Treasurer of Ontario under subsection 15 (2) or (3);
- (d) stating the amount payable for an audit under subsection 80 (3);
- (e) stating whether a document was served or delivered under this Act or the regulations;
- (f) stating whether any document required by this Act or the regulations was filed;
- (g) stating whether a document or notification was received or issued by the Superintendent under this Act or the regulations;
- (h) giving particulars of the custody of any book, record, document or thing.

6. The said Act is further amended by adding thereto the following section:

8a.—(1) In this section, “official document” means a certificate, licence, order, decision, direction, inquiry or notice under this Act or the regulations. Definition

(2) An official document that purports to be signed by the Superintendent shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or the position of the person appearing to have signed the official document. Official documents as evidence

(3) A true copy certified by the Superintendent under clause 8 (2) (b) is admissible in evidence to the same extent as and has the same evidentiary value as the document or thing of which it is a copy. True copies as evidence

7. Subsection 10 (3) of the said Act is repealed.

8. Sections 11, 12, 13, 14 and 15 of the said Act are repealed and the following substituted therefor:

11.—(1) An applicant for a licence under this Act or any person who is affected by an order, direction, decision or other requirement of the Minister or the Superintendent and disagrees with it may appeal the decision to the Divisional Court. Appeal

Orders, etc.,
not stayed

(2) An appeal to the Divisional Court from an order, direction, decision or other requirement of the Minister or the Superintendent under this Act or the regulations and any further appeal in the matter does not stay the order, direction, decision or requirement.

Court may
grant stay

(3) Notwithstanding subsection (2), a judge of the court to which an appeal has been taken may grant a stay until the disposition of the appeal.

Inquiries

12. The Superintendent may direct to an insurer any inquiry related to the contracts, financial affairs or the acts and practices of the insurer, and the insurer shall answer promptly, explicitly and completely.

Right of
access

13. The Superintendent or a person designated by the Superintendent may at any reasonable time examine the books, securities, documents and things related to the contracts, financial affairs and acts and practices of an insurer, agent or broker.

Duty to
furnish
information
on request

14.—(1) Persons who are licensed under this Act and officers and agents of an insurer shall furnish the Superintendent on request with full information,

- (a) relating to any contract of insurance issued by an insurer;
- (b) relating to any settlement or adjustment under a contract of insurance; or
- (c) respecting any activities related to the business of insurance.

Idem

(2) Insured persons shall furnish the Superintendent on request with full information relating to any contract of insurance issued to the insured person or to any settlement or adjustment affecting the insured person under a contract of insurance.

Examination
of insurers

15.—(1) Once each year or more frequently as the Superintendent may consider appropriate for all insurers or for a particular insurer, the Superintendent or a person appointed by the Superintendent,

- (a) shall examine an insurer's statement made under section 81;

- (b) may make such inquiries as are necessary to ascertain the insurer's condition and ability to meet its obligations as and when they become due; and
- (c) may make such inquiries as are necessary to ascertain whether the insurer has complied with the requirements of this Act applicable to its transactions.

(2) Subsection (1) does not apply so as to require an examination of an insurer, Exception

- (a) that is a mutual benefit society with fewer than 300 members; or
- (b) in respect of which the Superintendent adopts an examination by another government.

(3) The Superintendent may cause abstracts to be prepared of the books and vouchers and a valuation to be made of the assets and liabilities of an insurer and the insurer shall pay the Treasurer of Ontario for the cost of the preparation of the abstracts or the valuation upon receiving a certificate of the Superintendent stating the amount payable. Preparation of abstracts, valuation

(4) Where the office of an insurer at which an examination is made under this section is outside Ontario, the insurer shall pay the Treasurer of Ontario for the cost of the examination upon receiving a certificate of the Superintendent stating the amount payable. Expenses of examination

15a.—(1) Service of any document for any purpose of this Act, where the method is not otherwise specified, may be made, Service of documents

- (a) on any person, by personal service on the person to be served;
- (b) on an insurer, by first class registered mail addressed to the insurer or its chief executive officer at the insurer's head office in Ontario as identified in the records of the Superintendent;
- (c) on a person who is not an insurer, by first class registered mail addressed to the person's last known address; or
- (d) on any person, by leaving a copy of the document with the solicitor, if any, of the person to be served, or with an employee in the solicitor's office.

Service at
place of
residence

(2) Where an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document may be served by,

- (a) leaving a copy, in a sealed envelope addressed to the person, at the place of residence with anyone who appears to be an adult member of the same household; and
- (b) on the same day or the following day, mailing another copy of the document to the person at the place of residence.

Effective
date of
service

(3) Service at a person's place of residence under subsection (2) is effective on the fifth day after the document is mailed.

Requirements
for service by
mail

(4) Service by first class registered mail is not effective unless a post office receipt for the mail bearing a signature that purports to be the signature of the person to be served or of an officer of an insurer is received by the sender.

Effective
date of
service by
mail

(5) Service by first class registered mail is effective on the date on which the sender of the mail receives the receipt described in subsection (4).

Acceptance
of service by
a solicitor

(6) Service on a solicitor is not effective unless the solicitor endorses on the document or a copy of it an acceptance of service on behalf of his or her client and the date of the acceptance.

Deemed
service

15b.—(1) Where an attempt is made to effect service under subsection 15a (1) on an insurer or an agent, and for any reason service cannot be effected, the document may be served on the Superintendent and such service shall be deemed to be service on the insurer or agent.

Method of
service

(2) Service may be made on the Superintendent under subsection (1) by first class registered mail addressed to the Superintendent at the Superintendent's office, or by personal service on the Superintendent.

Superin-
tendent to
forward
document

(3) Where a document is served on the Superintendent under subsection (1), the Superintendent shall forthwith mail the document to the insurer or agent at the address for the insurer or agent contained in the records of the Superintendent.

9. Section 18 of the said Act is repealed and the following substituted therefor:

18. The Superintendent may publish any information that the Superintendent considers to be in the public interest.

Publication
by Superin-
tendent

10.—(1) Subsections 21 (2) and (3) of the said Act are repealed and the following substituted therefor:

(2) No person shall carry on business as an insurer or engage in an act constituting the business of insurance in Ontario without a licence under this Act.

Prohibition
re: licence

(2a) No insurer shall carry on business in Ontario as an insurer of a class of insurance that is not authorized by its licence under this Act.

Idem

(3) No person in Ontario shall do or cause to be done any act or thing mentioned in subsection 20 (3) on behalf of or as agent of an insurer that is not licensed under this Act.

Prohibition
against acting
on behalf of
unlicensed
insurer

(2) Subsection 21 (5) of the said Act is repealed and the following substituted therefor:

(5) No insurer that is incorporated in Ontario and licensed under this Act shall carry on or solicit business as an insurer in another jurisdiction unless it is authorized to do so under the laws of that jurisdiction.

Unauthorized
insurance

11. Paragraph 1 of subsection 25 (1) of the said Act is amended by striking out “benefits set forth in Schedule C” in the last line and inserting in lieu thereof “no-fault benefits required by subsection 232 (1)”.

12.—(1) Subsection 80 (1) of the said Act is repealed and the following substituted therefor:

(1) When required by the Superintendent, licensed insurers shall prepare and file with the Superintendent or with an agency designated by the Superintendent a return respecting the experience of the insurer’s business in a form approved by the Superintendent containing such information as the Superintendent may require.

Returns

(2) Subsection 80 (3) of the said Act is amended by striking out “statistical” in the fifth line.

(3) Subsections 80 (4) and (5) of the said Act are repealed and the following substituted therefor:

(4) The insurer shall pay the accountant for an audit under subsection (3) forthwith upon receiving a certificate of the Superintendent stating the amount payable.

Expenses of
audit

Debt to the
Crown

(5) Any amount payable to an accountant under subsection (3) that is not paid within thirty days from the date on which the insurer receives the Superintendent's certificate becomes a debt owing to the Crown.

13.—(1) Subsection 81 (1) of the said Act is repealed and the following substituted therefor:

Annual and
interim
statements

(1) Subject to sections 323 and 327, every licensed insurer shall,

- (a) prepare annually and deliver to the Superintendent, on or before the prescribed date for the prescribed category of insurer, a statement of the condition of affairs of the insurer for the year that ended on the 31st day of December next preceding the delivery of the statement; and
- (b) prepare and deliver to the Superintendent when required by the Superintendent, for the prescribed category of insurer, an interim statement for the period specified by the Superintendent containing such information as the Superintendent considers necessary to assess the insurer's condition of affairs.

Contents of
annual
statement

(1a) A statement of the condition of affairs of an insurer under clause (1) (a) shall be in a form approved by the Superintendent, and verified in a manner approved by the Superintendent, and shall set out,

- (a) the assets, liabilities, receipts and expenditures of the insurer for the year;
- (b) particulars of the business done by the insurer in Ontario during the year; and
- (c) such other information as the Superintendent considers necessary to assess an insurer's condition of affairs.

Auditor's
report

(1b) A statement of the condition of affairs of an insurer under clause (1) (a) shall be accompanied by a report of an auditor prepared in the manner required by the Superintendent.

(2) Subsection 81 (2) of the said Act is amended by striking out "subsection (1)" in the fourth line and inserting in lieu thereof "clause (1) (a)".

(3) Subsections 81 (4), (5), (6), (7), (8) and (9) of the said Act are repealed and the following substituted therefor:

(4) The Superintendent is authorized to obtain from insurers personal information about identifiable individuals where the collection of the information is required to monitor the condition of affairs of the insurer and the information is collected on a statement made under subsection (1).

Indirect
collection of
personal
information

14. The said Act is further amended by adding thereto the following sections:

81a. Notice of the requirements for returns under section 80 or 81 is sufficient if it is sent by first class ordinary mail addressed to the insurer at the insurer's address for service of notice or process as identified in the records of the Superintendent.

Notice of
returns

81b. The financial statements required under this Act shall be prepared in accordance with this Act and the regulations.

Preparation
of financial
statements

15. Section 97 of the said Act and the heading "Penalties" preceding section 97 are repealed.

16. Clause 98 (1) (b) of the said Act is repealed and the following substituted therefor:

(b) establishing benefits for the purposes of Part VI that must be provided under contracts evidenced by motor vehicle liability policies and establishing terms, conditions, provisions, exclusions and limits related to such benefits;

(ba) requiring insurers to offer optional benefits in excess of the benefits that must be provided under clause (b) and establishing terms, conditions, provisions, exclusions and limits related to such benefits;

(bb) prescribing categories of insurers for the purpose of subsection 80 (1), requiring insurers to file a return under that subsection by category and prescribing the information that insurers may solicit from insured persons for purposes of such returns;

(bc) prescribing categories of insurers for the purpose of subsection 81 (1);

(bd) prescribing dates for the purpose of clause 81 (1) (a);

- (be) governing the preparation of financial statements required under this Act or the regulations;
- (bf) prescribing the information to be given to applicants or to insured persons under subsection 203b (1) and the circumstances in which it is to be given;
- (bg) prescribing rules for determining the degree of fault in various situations for loss or damage arising directly or indirectly from the use or operation of an automobile;
- (bh) providing for and governing indemnification and subrogation where section 230a or subsection 231 (5b) applies;
- (bi) increasing the amount of damages required before a notice must be given under section 230b;
- (bj) prescribing activities that constitute unfair or deceptive acts or practices under subclause 393 (b) (xii), and prescribing requirements to be met by insurers that, if not complied with, constitute unfair or deceptive acts or practices.

17. Section 201 of the said Act is repealed and the following substituted therefor:

Definitions

201.—(1) In this Part,

- “automobile”, when used in respect of a contract evidenced by a motor vehicle liability policy, includes a motor vehicle required under any act to be insured under such a policy;
- “contract” means a contract of automobile insurance;
- “excluded driver” means a person named as an excluded driver in an endorsement under section 217a;
- “fault determination rules” means the rules prescribed under clause 98 (1) (bg);
- “insured” means a person insured by a contract whether named or not and includes every person who is entitled to no-fault benefits under the contract whether or not described therein as an insured person;
- “no-fault benefits” means the benefits set out in the regulations made under clauses 98 (1) (b) and (ba);

“*No-Fault Benefits Schedule*” means the regulations made under clauses 98 (1) (b) and (ba);

“occupant”, in respect of an automobile, means,

- (a) the driver,
- (b) a passenger, whether being carried in or on the automobile,
- (c) a person getting into or on or getting out of or off the automobile;

“spouse” means either of a man and a woman who,

- (a) are married to each other,
- (b) have together in good faith entered into a marriage, or
- (c) are not married to each other and have cohabited continuously for a period of not less than three years, or have cohabited in a relationship of some permanence if they are the natural or adoptive parents of a child.

(2) A reference to Schedule C in any other Act or in any regulation, contract or other instrument shall be deemed to be a reference to the *No-Fault Benefits Schedule* and a reference to benefits under Schedule C shall be deemed to be a reference to no-fault benefits. Transition

(3) Every contract to which subsection 232 (1) applies shall be deemed to have been amended on the day this subsection comes into force to include no-fault benefits in accordance with the *No-Fault Benefits Schedule*. Idem

(4) The benefits of a person who, before the coming into force of this subsection, was entitled to benefits under Schedule C shall be determined in accordance with this Act as it read immediately before the repeal of Schedule C. Idem

(5) For the purposes of subsections (2) and (4), “Schedule C” means Schedule C to this Act as this Act read before the coming into force of this subsection. Idem

18. The said Act is further amended by adding thereto the following section:

Exception re:
insured

201a. Except as provided in the *No-Fault Benefits Schedule*, the insured under a contract shall be deemed not to include any person who sustains loss or damage while any automobile insured under the contract is being used or operated by an excluded driver.

19.—(1) Subsection 203 (1) of the said Act is amended by striking out “application” in the first line.

(2) Subsection 203 (2) of the said Act is repealed.

20. The said Act is further amended by adding thereto the following sections:

Application
form

203a. Where so required by the regulations, no insurer shall use a form of application other than a prescribed form.

OTHER INFORMATION

Information
for
applicants,
etc.

203b.—(1) An insurer shall supply at such times as may be prescribed such information as may be prescribed to applicants for automobile insurance and to named insureds under contracts.

Information
deemed to
be part of
application

(2) Information supplied under subsection (1) by an insurer to an applicant for automobile insurance shall be deemed to be a part of the application.

Information
from brokers

203c. A broker shall provide, on the request of an applicant for insurance, the names of all insurers with whom the broker has an agency contract relating to automobile insurance and all information obtained by the broker relating to quotations on automobile insurance for the applicant.

21. Section 206 of the said Act is amended by adding thereto the following subsection:

No-fault
benefits
protected

(1a) Subsection (1) does not invalidate such no-fault benefits as are set out in the *No-Fault Benefits Schedule*.

22.—(1) Subsection 207 (1) of the said Act is amended by striking out “subsection 203 (2), section 208 and section 229” in the first and second lines and inserting in lieu thereof “sections 208 and 229”.

(2) The statutory conditions set out in section 207 of the said Act are amended by adding thereto the following:

1a. Despite a failure to comply with statutory condition 1 (1), a person is entitled to such no-fault benefits as are set out in the *No-Fault Benefits Schedule*. No-Fault
Benefits
Protected

1b.—(1) Where the insurer has incorrectly classified its risk exposure under this contract under the risk classification scheme used by the insurer or that the insurer is required by law to use, the insurer shall make the necessary correction and shall refund to the insured the amount of any premium overpayment together with interest thereon for the period that the incorrect classification was in effect at the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the incorrect classification was first made rounded to the next highest whole number if the bank rate includes a fraction. Refund of
Premium
Overpayment

(2) In this statutory condition, “bank rate” means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to the banks listed in Schedule A to the *Bank Act* (Canada). Definition

1c. The insured may pay the premium, without penalty, in equal monthly payments totalling the amount of the premium. The insurer may charge a reasonable rate of interest. Monthly
Payments

(3) Statutory condition 6 (3) set out in the said section 207 is amended by striking out “one year” in the fifth line and inserting in lieu thereof “two years”.

23. Subsection 208 (1) of the said Act is amended by striking out “232 or 233” in the last line and inserting in lieu thereof “or 232”.

24. The said Act is further amended by adding thereto the following section:

208a.—(1) If an insurer does not intend to renew a contract or if an insurer proposes to renew a contract on significantly varied terms, the insurer shall, Notice of
expiry or
significant
variation

(a) give the named insured not less than thirty days notice in writing of the insurer’s intention or proposal; or

(b) give the broker, if any, through whom the contract was placed forty-five days notice in writing of the insurer’s intention or proposal.

(2) Subject to subsection (3), a broker to whom an insurer has given notice under clause (1) (b) shall give the named Idem

insured under the contract not less than thirty days notice in writing of the insurer's intention or proposal.

Exception

(3) Where, before a broker is required to have given notice to a named insured under subsection (2), the broker places with another insurer a replacement contract containing substantially similar terms as the expiring contract, the broker is exempted from giving notice under subsection (2).

Significant variation of terms

(4) For the purposes of subsection (1), a significant variation in the terms of a contract includes a significant increase in the premium payable, or a change in coverages or policy limits.

25.—(1) Subsection 209 (1) of the said Act is repealed and the following substituted therefor:

Coverage of owner's policy, specific automobile

(1) Subject to section 209a, every contract evidenced by an owner's policy insures the person named therein and every other person who with the named person's consent personally drives an automobile owned by the insured named in the contract and within the description or definition thereof in the contract against liability imposed by law upon the insured named in the contract or that other person for loss or damage,

- (a) arising from the ownership or directly or indirectly from the use or operation of any such automobile; and
- (b) resulting from bodily injury to or the death of any person, and damage to property.

Innocent persons

(1a) A person who is unaware that the driver does not have the named person's consent to drive the automobile and who has no reason to suspect a lack of consent is not precluded from any recovery of no-fault benefits to which, but for the lack of consent, the person would be entitled.

(2) Paragraph 1 of subsection 209 (3) of the said Act is repealed and the following substituted therefor:

- 1. The spouse of the deceased insured.

26. The said Act is further amended by adding thereto the following section:

Insurer not liable re: excluded driver

209a. If a contract evidenced by a motor vehicle liability policy names an excluded driver, the insurer is not liable to any person under the contract or under this Act or the regulations for any loss or damage that occurs while the excluded

driver is using or operating a motor vehicle insured under the contract, except as provided in the *No-Fault Benefits Schedule*.

27. Clause 210 (a) of the said Act is amended by inserting after “arising” in the first line “directly or indirectly”.

28. Section 214 of the said Act is amended by inserting before “use” in the fourth line “or directly or indirectly from the”.

29. The said Act is further amended by adding thereto the following section:

217a. A named insured may stipulate by endorsement to a contract evidenced by a motor vehicle liability policy that any person named in the endorsement is an excluded driver under the contract.

Excluded
driver
endorsement

30. Subsection 220 (1) of the said Act is amended by inserting after “ownership” in the third line “or directly or indirectly out of the”.

31. The said Act is further amended by adding thereto the following section:

DIRECT COMPENSATION - PROPERTY DAMAGE

230a.—(1) This section applies if an automobile or its contents, or both, suffers damage arising directly or indirectly from the use or operation in Ontario of any other automobile and both are insured under contracts evidenced by motor vehicle liability policies issued by insurers licensed to undertake insurance in Ontario.

Application

(2) If this section applies, an insured is entitled to recover for the damages to the insured’s automobile and its contents from the insured’s insurer under the coverage described in subsection 209 (1) as though the insured were a third party.

Damage
recovery
from
insured’s
insurer

(3) Recovery under subsection (2) shall be based on the degree of fault of the insurer’s insured as determined under the fault determination rules.

Idem

(4) An insured may bring an action against the insurer if the insured is not satisfied that the degree of fault established under the fault determination rules accurately reflects the actual degree of fault or the insured is not satisfied with a proposed settlement and the matters in issue shall be determined in accordance with the ordinary rules of law.

Dispute
resolution

Restrictions
on other
recovery

(5) If this section applies,

- (a) an insured has no right of action against any person other than the insured's insurer for damages to the insured's automobile or its contents;
- (b) an insurer, except as permitted by the regulations made under clause 98 (1) (bh), has no right of indemnification from or subrogation against any person for payments made to its insured under this section.

Other
coverages not
affected

(6) This section does not affect an insured's right to recover in respect of any physical damage coverage in respect of the insured automobile.

Non-
application

(7) This section does not apply if the damage occurred before the coming into force of this section.

32. The said Act is further amended by adding thereto the following section:

NOTICE OF DAMAGE

Notice to
insurer

230b.—(1) An insured under a contract shall give to the insured's insurer written notice, with all available particulars, of any incident involving the insured automobile in which property damage in excess of \$750 occurs directly or indirectly from the use or operation of an automobile.

Idem

(2) Subject to subsection (3), the notice required by subsection (1) shall be given to the insurer within seven days of the incident.

Idem

(3) If the insured is unable because of incapacity to comply with subsection (1) within seven days of the incident, the insured shall comply as soon as possible thereafter.

Idem

(4) Compliance with this section shall be deemed to be compliance with statutory conditions 3 (1) (a) and 4 (1) (a) set out in section 207.

33.—(1) Clause 231 (2) (b) of the said Act is amended,

- (a) by striking out “if residing in the same dwelling premises as the insured” in the first and second lines of sub-subclause (B); and

- (b) by striking out “if residing in the same dwelling premises as such person” in the fifth, sixth and seventh lines of sub-subclause (C).

(2) Section 231 of the said Act is amended by adding thereto the following subsection:

(2a) Notwithstanding clause 231 (2) (b), a person who sustains loss or damage while the insured automobile is being used or operated by an excluded driver shall be deemed not to be a person insured under the contract in which the excluded driver is named, except as provided in the *No-Fault Benefits Schedule*. Exclusion from coverage

(3) The said section 231 is further amended by adding thereto the following subsections:

(5a) No person has a right of action against any other person in respect of damage to an uninsured automobile or its contents arising directly or indirectly from the use or operation of an automobile if at the time of the damage the uninsured automobile was required by any Act to be insured under a contract evidenced by a motor vehicle liability policy. Restriction on recovery

(5b) Despite subsection (5), no person, except as permitted by the regulations made under clause 98 (1) (bh), has a right of indemnification from or subrogation against the owner or driver of an uninsured automobile in respect of damage to an automobile or its contents arising directly or indirectly from the use or operation of the uninsured automobile. Idem

(4) Subsection 231 (6) of the said Act is repealed and the following substituted therefor:

(6) A release under section 239a does not enure to the benefit of any person against whom the insurer may subrogate under subsection (5). Release

34. Sections 232, 233 and 234 of the said Act are repealed and the following substituted therefor:

231a.—(1) In respect of loss or damage arising directly or indirectly from the use or operation of an automobile after this section comes into force and despite any other Act, the owner or driver of an automobile is not liable in an action in Ontario for losses from bodily injury arising from such use or operation in Canada, the United States of America or any other jurisdiction designated in the *No-Fault Benefits Schedule* involving the automobile unless, as a result of such use or operation, the injured person has died or has sustained. No-fault principle established

(a) permanent serious disfigurement; or

(b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.

Idem

(2) Subsection (1) does not relieve any person from liability other than the owner or driver.

Judicial
determination

(3) In an action for loss or damage from bodily injury arising directly or indirectly from the use or operation of an automobile, a judge shall, on motion made before or at trial, determine if the injured person has, as a result of the accident, died or has sustained,

(a) permanent serious disfigurement; or

(b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.

Idem

(4) Even though a defence motion under subsection (3) is denied, the defendant may still, at trial and following the hearing of evidence, raise the defence provided in subsection (1).

Joint tort
feasors

(5) In an action involving a plaintiff who cannot recover against the owner or driver of any automobile because of the operation of subsection (1), a defendant is not liable to contribute or indemnify in respect of the liability of any person who is excluded from liability because of the operation of subsection (1).

Idem

(6) For the purposes of subsection (5), the proportion of liability of all persons involved in the incident from which the action arose shall be determined as though all persons wholly or partly responsible for the loss or damage were parties to the action even though any such person is not actually a party.

Reduction of
damages

(7) The damages awarded to a person in an action for loss or damage arising directly or indirectly from the use or operation of an automobile shall be reduced by,

(a) the no-fault benefits that the person has received or that were available and by the present value of any no-fault benefits to which he or she is entitled;

(b) all payments that the person has received or has available for loss of income under the laws of any jurisdiction or under an income continuation benefit

plan arising by reason of the person's occupation or employment; and

- (c) all payments that the person has received under a sick leave plan arising by reason of the person's occupation or employment.

(8) Benefits received under the *Old Age Security Act* (Canada), including amendments thereto, shall not be applied under subsection (7) to reduce damages. Exception
R.S.C. 1985,
c. O-9

(9) An insurer who has made a payment or has a liability under a contract for a benefit described in clause (7) (b) or (c) is not subrogated to a right of recovery of the insured against another person in respect of that benefit. Limitation on
subrogation

(10) Subsections (7), (8) and (9) apply to actions decided after the coming into force of this section whether the action was commenced before or after that time. Application

(11) A judgment of a court of another jurisdiction is not enforceable in Ontario if the person liable under the judgment would not have been liable under subsection (1) had the action been brought in Ontario. Judgments of
other
jurisdictions

232.—(1) Every contract evidenced by a motor vehicle liability policy shall provide for the no-fault benefits set out in the *No-Fault Benefits Schedule*, subject to the terms, conditions, provisions, exclusions and limits set out in that Schedule. No-fault
benefits

(2) The following rules apply for determining who is liable to pay no-fault benefits: Liability to
pay

1. In respect of an occupant of an automobile,
 - i. the occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured,
 - ii. if recovery is unavailable under subparagraph i, the occupant has recourse against the insurer of the automobile in which he or she was an occupant,
 - iii. if recovery is unavailable under subparagraph ii, the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to no-fault benefits arose,

iv. if recovery is unavailable under subparagraph iii, the occupant has recourse against the Motor Vehicle Accident Claims Fund.

2. In respect of non-occupants,

- i. the non-occupant has recourse against the insurer of an automobile in respect of which the non-occupant is an insured,
- ii. if recovery is unavailable under subparagraph i, the non-occupant has recourse against the insurer of the automobile that struck the non-occupant,
- iii. if recovery is unavailable under subparagraph ii, or if there is doubt as to which automobile struck the non-occupant, the non-occupant has recourse against the insurer of any automobile involved in the incident from which the entitlement to no-fault benefits arose,
- iv. if recovery is unavailable under subparagraph iii, the non-occupant has recourse against the Motor Vehicle Accident Claims Fund.

Liability (3) An insurer against whom a person has recourse for the payment of no-fault benefits is liable to pay the benefits.

Choice of insurer (4) If, under subparagraph i or iii of paragraph 1 or subparagraph i or iii of paragraph 2 of subsection (2), a person has recourse against more than one insurer for the payment of no-fault benefits, the person, in his or her absolute discretion, may decide the insurer from whom he or she will claim the benefits.

Excess insurance (5) The insurance mentioned in subsection (1) is excess insurance to any other insurance not being automobile insurance of the same type indemnifying the injured person or in respect of a deceased person for the expenses.

Idem (6) The insurance mentioned in subsection (1) is excess insurance to any other insurance indemnifying the injured person or in respect of a deceased person for the expenses.

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Particulars of insurance **234.**—(1) A person who is entitled to no-fault benefits or his or her personal representative is entitled to particulars as to whether the owner or operator of any automobile against

whom the person may have a claim has insurance that provides for no-fault benefits and the name of the insurer, if any.

(2) The person or his or her personal representative may demand the particulars described in subsection (1) by registered mail from the owner or operator of the automobile or the insurer, if any, of either of them. Demand for particulars

(3) Every owner, operator and insurer shall comply with a demand under subsection (2) within ten days of receiving the demand. Reply

35. Section 235 of the said Act is amended by striking out “232 or 233” in the second line and inserting in lieu thereof “or 232”.

36. Section 236 of the said Act is repealed.

37. Subsection 237 (1) of the said Act is amended by striking out “232 or 233” in the second line and inserting in lieu thereof “or 232”.

38. Section 238 of the said Act is amended,

- (a) by striking out “232 or 233” in the third line and inserting in lieu thereof “or 232”; and
- (b) by striking out “one year” in the fifth line and inserting in lieu thereof “two years”.

39. Subsection 239 (2) of the said Act is repealed.

40. The said Act is further amended by adding thereto the following sections:

239a. Payments made or available to a person under the *No-Fault Benefits Schedule* constitute, to the extent of such payments, a release by the person or the person’s personal representative or any one claiming through or under the person by virtue of Part V of the *Family Law Act, 1986* or of any claim under subsection 231 (1) or 232 (1). Release 1986, c. 4

239b.—(1) The insurer responsible under subsection 232 (2) for the payment of no-fault benefits to a motorcyclist or to a person described in subsection 232 (4) is entitled to indemnification in relation to such benefits paid by it from the insurers of other automobiles involved in the incident from which the responsibility to pay the no-fault benefits arose. Indemnification in certain cases

Idem

(2) Indemnification under subsection (1) shall be made according to the respective degree of fault of each insurer's insured as determined under the fault determination rules.

Deductible

(3) No indemnity is available under subsection (2) in respect of the first \$2,000 of no-fault benefits paid in respect of a person described in that subsection.

41.—(1) Subsection 241 (1) of the said Act is amended by inserting after “ownership” in the fourth line “or directly or indirectly with the”.

(2) Subsection 241 (2) of the said Act is amended by striking out “232 and 233” in the first line and inserting in lieu thereof “and 232”.

42. Section 365 of the said Act is amended by adding at the end thereof “but does not include the Ontario Automobile Insurance Board established under the *Ontario Automobile Insurance Board Act, 1988*”.

43.—(1) Clause 393 (a) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 70, section 32, is repealed and the following substituted therefor:

- (a) “person” includes an individual, corporation, association, partnership, organization, reciprocal or inter-insurance exchange, member of the society known as Lloyd's, fraternal society, mutual benefit society or syndicate.

(2) Clause 393 (b) of the said Act is amended,

- (a) by striking out “in the business of insurance” in the first and second lines;
- (b) by striking out “or” at the end of subclause (viii); and
- (c) by repealing subclause (ix) and the following substituted therefor:
 - (ix) any conduct resulting in unreasonable delay or resistance to the fair adjustment and settlement of claims,
 - (x) making the issuance or variation of a policy of automobile insurance conditional upon the purchase by the insured of another insurance policy,

- (xi) when rating a person or a vehicle as an insurance risk for the purpose of determining the premium payable for a policy of automobile insurance, misclassifying the person or vehicle under the risk classification system used by the insurer or that the insurer is required by law to use, or
- (xii) any activity or failure to act that is prescribed as an unfair or deceptive act or practice.

44. Sections 396 and 397 of the said Act are repealed and the following substituted therefor:

396.—(1) If, in the opinion of the Superintendent, a person is committing any act or pursuing any course of conduct that is an unfair or deceptive act or practice or might reasonably be expected to result in a state of affairs that would constitute an unfair or deceptive act or practice, the Superintendent may give notice to the person of the Superintendent's intention to order the person, Superintendent's orders

- (a) to cease or refrain from doing any act or pursuing any course of conduct identified by the Superintendent;
- (b) to cease engaging in the business of insurance or any aspect of the business of insurance specified by the Superintendent; or
- (c) to perform such acts as, in the opinion of the Superintendent, are necessary to remedy the situation.

(2) A person, by written notice serviced on the Superintendent within fifteen days after the service of the notice on the person under subsection (1), may require a hearing before the Superintendent. Hearing

(3) Notwithstanding subsection (2), where, in the opinion of the Superintendent, the interests of the public may be prejudiced or adversely affected by any delay in the issuance of a permanent order, the Superintendent, without prior notice, may make an interim order as described in clause (1) (a), (b) or (c) which shall take effect immediately on its making, and which shall become permanent on the fifteenth day after its making unless within that time a hearing before the Superintendent is requested. Interim order

(4) If no hearing is requested within the time set out in subsection (2) or (3), or if a hearing is held and the Superintendent When order may be made

dent is of the opinion that an order described in clause (1) (a), (b) or (c) should be made, the Superintendent may make a permanent order under any of those clauses which shall take effect immediately on its making or at such later date as may be set out in the order.

Hearing (5) A request for a hearing under subsection (3) shall be in writing and served on the Superintendent.

Extension of order (6) If a hearing is requested under subsection (3), the Superintendent may extend the temporary order until the hearing is concluded or any appeal from the hearing is concluded and the order is confirmed, varied or revoked.

Modification or revocation (7) The Superintendent may, after giving the person named in the order an opportunity to be heard, modify or, without holding a hearing, revoke an order made under this section.

45. The said Act is further amended by adding thereto the following Part:

PART XX

EXAMINATION AND ENFORCEMENT

Definition **407.** In this Part, “examination” means examination, appraisal, audit or inspection under this Act.

Examinations, general **408.—(1)** It is a condition of the licensing of a person that the person facilitate examinations.

Material to be furnished (2) For the purpose of an examination, the insurer, agent or adjuster shall prepare and submit to the person conducting the examination such statements or returns with respect to the insurer’s, agent’s or adjuster’s business, finances or other affairs, in addition to the statements or returns mentioned in this Act, as the Superintendent may require.

Duty of officers, etc. (3) The officers, agents and employees of an insurer, agent or adjuster shall open the books for inspection and shall otherwise facilitate an examination under this Act so far as it is in their power.

Production of books (4) In order to facilitate an examination of the books and records of an insurer, agent or adjuster, the Superintendent may require the insurer, agent or adjuster to produce the books and records at his, her or its principal place of business in Ontario, or at such other convenient place as the Superintendent may direct.

(5) On the direction of the Superintendent, if an examination of an insurer is made at an office situate outside Ontario, the insurer shall pay the costs and expenses in connection with the examination.

Expense of further examination

409.—(1) A person conducting an examination, for the purpose of carrying out that person's duties,

Powers of examination, etc.

- (a) may enter any place at any reasonable time;
- (b) may require the production for inspection of documents or things that may be relevant to the carrying out of the duties;
- (c) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (b) for the purpose of making copies or extracts and shall return them within a reasonable time to the person who produced them; and
- (d) may question a person on matters that are or may be relevant to the carrying out of the examination.

(2) No person may exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section.

Entry to dwellings

(3) Where a justice of the peace is satisfied on information upon oath that there are in a place documents or things that there are reasonable grounds to believe will afford evidence relevant to the carrying out of an examination under this Act, the justice of the peace may issue a warrant authorizing the person named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

Warrant for search

(4) Where a justice of the peace is satisfied on information upon oath that there are reasonable grounds to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that a person may carry out an examination, the justice of the peace may issue a warrant authorizing such entry by the person named in the warrant.

Warrant for entry

(5) A warrant issued under subsection (3) or (4),

Execution and expiry of warrant

(a) shall specify the hours and days during which it may be executed; and

(b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

Obstruction (6) No person shall hinder, obstruct or interfere with a person in the execution of a warrant or otherwise impede a person carrying out an examination.

Idem (7) Subsection (6) is not contravened where a person refuses to produce documents or things, unless a warrant has been issued under subsection (3).

Admissibility of copies (8) Copies of, or extracts from, documents and things removed from premises under this Act and certified by the person who made the copies as being true copies of, or extracts from, the originals are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Reporting by auditor **410.**—(1) An auditor shall promptly report to the insurer and to the Superintendent any breach of this Act of which the auditor is aware or is made aware under subsection (2) and, if the insurer does not act to rectify the breach within a reasonable period of time, the auditor shall promptly report the failure to rectify to the Superintendent.

Reporting by others (2) Any person undertaking professional services for an insurer who, in providing the professional services, becomes aware of a breach of this Act shall promptly report the breach to the insurer and the auditor of the insurer or, if there is no auditor, to the Superintendent.

Solicitor-client privilege (3) Nothing in this section abrogates any privilege that may exist between a solicitor and the solicitor's client.

No liability **411.** A person who in good faith makes a statement or disclosure to the Superintendent that is relevant to the Superintendent's duties shall not be liable in any civil action arising out of the making of the statement or disclosure.

Definition **412.**—(1) In this section, "person" includes an individual, corporation, association, partnership, organization, reciprocal or inter-insurance exchange, member of the society known as Lloyd's, fraternal society, mutual benefit society or syndicate.

Offences (2) Every person who,

- (a) directly or indirectly furnishes false, misleading or incomplete information to the Superintendent whether the information is required under this Act or is volunteered;
- (b) fails to comply with any requirement of, or any order or direction made under, this Act;
- (c) fails to comply with any written undertaking given to the Superintendent;
- (d) contravenes this Act or the regulations; or
- (e) contravenes any term, condition or restriction imposed by a licence,

is guilty of an offence.

(3) On conviction for an offence under this Act, the person convicted is liable on a first conviction to a fine of not more than \$100,000 and on each subsequent conviction to a fine of not more than \$200,000. Penalty

(4) Every director, officer and chief agent of a corporation and every person acting in a similar capacity or performing similar functions in an unincorporated association who, Derivative

- (a) caused, authorized, permitted or participated in the corporation or unincorporated association committing an offence referred to in subsection (2); or
- (b) failed to take reasonable care to prevent the corporation or unincorporated association from committing an offence referred to in subsection (2),

is guilty of an offence and is liable on a first conviction to a fine of not more than \$100,000 and on each subsequent conviction to a fine of not more than \$200,000, whether or not the corporation or unincorporated association has been prosecuted for or convicted of the offence.

(5) Where a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto. Restitution

413.—(1) If it appears to the Superintendent that any person has failed to comply with or is not complying with, Order for compliance

- (a) any order, decision, direction or inquiry made under this Act;
- (b) any undertaking given; or
- (c) any term, condition or restriction imposed on its licence, where applicable,

the Superintendent may, in addition to any other rights under this Act, apply to a judge of the High Court for an order directing the person to comply with or restraining the person from violating the order, decision, direction, inquiry, undertaking, term, condition or restriction, and the judge may make such order as the judge considers appropriate.

Appeal

(2) An appeal lies to the Divisional Court from an order made under subsection (1).

Limitation
period

414. No proceeding for an offence under this Act may be commenced more than two years after the facts upon which the proceedings are based first came to the knowledge of the Superintendent, as certified by the Superintendent.

46. Schedule C to the said Act is repealed.

47.—(1) Subclause 1 (c) (ii) of the *Compulsory Automobile Insurance Act*, being chapter 83 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

R.S.O. 1980,
c. 218

(ii) provides the no-fault benefits set out in the *No-Fault Benefits Schedule* under the *Insurance Act*.

(2) Section 3 of the said Act is amended by adding thereto the following subsection:

Excluded
driver to
carry
insurance
card

(1a) Despite subsection (1), an operator of a motor vehicle who is named as an excluded driver under the contract of automobile insurance under which the vehicle is insured shall have in the vehicle at all times an insurance card evidencing that the operator is a named insured under another contract of automobile insurance, and the operator shall surrender the insurance card for reasonable inspection upon the demand of a police officer.

(3) Subsection 3 (2) of the said Act is amended by striking out "subsection (1)" in the first line and inserting in lieu thereof "this section".

48. Section 66 of the *Corporations Tax Act*, being chapter 97 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

(1a) Clause (1) (b) does not apply in respect of a motor vehicle liability policy, within the meaning of the *Insurance Act*, unless the automobile insured by the policy is, Exception
R.S.O. 1980,
c. 218

- (a) an ambulance or funeral vehicle;
- (b) a bus, limousine or taxi or other vehicle that carries passengers for reward or as part of a transportation service;
- (c) a fire department or police vehicle;
- (d) a driver training vehicle;
- (e) a vehicle rented for a period of less than thirty days;
- (f) a vehicle used primarily to transport things in connection with the insured's business or occupation;
or
- (g) a vehicle that weighs more than 4,500 kilograms.

49. Section 36 of the *Health Insurance Act*, being chapter 197 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

(4) Despite subsection (1), the Plan is not subrogated to the rights of an insured person in respect of personal injuries arising directly or indirectly from the use or operation of an automobile after this section comes into force in Canada, the United States of America or any other jurisdiction designated in the *No-Fault Benefits Schedule* under the *Insurance Act*. Exception
R.S.O. 1980,
c. 218

50.—(1) Section 1 of the *Motor Vehicle Accident Claims Act*, being chapter 298 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 12, section 1, is further amended by adding thereto the following subsection:

(1a) Notwithstanding that a motor vehicle is insured under a motor vehicle liability policy, it shall be deemed to be an uninsured motor vehicle for the purposes of this Act while it is being operated by an excluded driver as defined in the *Insurance Act* with respect to that policy unless the excluded driver is a named insured under another motor vehicle liability policy. Exception re:
excluded
driver
R.S.O. 1980,
c. 218

(2) The said Act is amended by adding thereto the following section:

No-fault
benefits

R.S.O. 1980,
c. 218

4b.—(1) Any person who has recourse against the Fund for no-fault benefits under section 232 of the *Insurance Act* may make application, in a form prescribed by the Minister, for payment out of the Fund of the benefits.

Payment out
of Fund
authorized

(2) The Minister may, in respect of an application made under subsection (1), make payment out of the Fund of an amount that the Minister considers proper in all the circumstances if the applicant signs a release in respect thereof.

51. Section 10 of the *Motorized Snow Vehicles Act*, being chapter 301 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Application
of
R.S.O. 1980,
cc. 198, 298

10. The *Highway Traffic Act*, except Part XI, and the *Motor Vehicle Accident Claims Act*, except section 4b, do not apply to a motorized snow vehicle or to the driving thereof.

Commence-
ment

52. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

13 September 1989

DRAFT
REGULATION MADE UNDER THE
INSURANCE ACT

NO-FAULT BENEFITS SCHEDULE

PART I

General

1. This Regulation may be cited as the No-Fault Benefits Schedule.

2.-(1) In this Schedule,

"accident" means an incident in which the use or operation of an automobile causes bodily injury, directly or indirectly;

"insured automobile", in respect of a particular motor vehicle liability policy, means the automobile described in the policy and includes a newly acquired or temporary substitute automobile;

"insured person", in respect of a particular motor vehicle liability policy, means,

- (a) an occupant of the insured automobile,
- (b) the named insured, his or her spouse and any dependant of either of them while the occupant of any other automobile,
- (c) any person who is not the occupant of an automobile or of railway rolling stock that runs on rails, who is struck in Ontario by the insured automobile,
- (d) the named insured, his or her spouse and any dependant of either of them who is not the occupant of an automobile or of railway rolling stock that runs on rails, who is struck by any other automobile,
- (e) subject to subsection (2), if the named insured is a corporation, unincorporated association, partnership or sole proprietorship, any person for whose regular use the insured automobile is supplied, the person's spouse and any dependant of either of them who is injured,
 - (i) while an occupant of any other automobile if that automobile is not used for carrying passengers for compensation or for commercial deliveries, or
 - (ii) by any other automobile while not the occupant of an automobile or of railway rolling stock that runs on rails;

(2) A person is not an insured person within the meaning of clause (e) of the definition of "insured person" in subsection (1) if,

- (a) the person or his or her spouse owns an automobile;
or

- (b) the person is engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident.

(3) For the purposes of this Schedule, a person is a dependant of another person if the person is principally dependent for financial support on the other person or the other person's spouse.

3. The benefits set out in this Schedule shall be provided under every contract evidenced by a motor vehicle liability policy in respect of accidents occurring on or after the 1st day of March, 1990.

4.-(1) An insurer shall include a copy of this Schedule in every motor vehicle liability policy issued by the insurer.

(2) An insurer shall send a copy of this Schedule to each holder of an existing motor vehicle liability policy not later than the earlier of the day the policy is renewed and the 180th day after the day this Schedule comes into force.

5. Subject to sections 15 and 16, the insurer will pay the benefits under this Schedule despite section 201a, subsection 206(1), section 209a, subsection 231(2a) and statutory condition 1(1) of section 207 of the Insurance Act.

PART II

Supplementary Medical, Rehabilitation and Long Term Care Benefits

6. The insurer will pay an insured person for the reasonable cost of repairing or replacing prostheses, dentures, prescription eyewear, hearing aids and other medical or dental devices that are lost or damaged in an accident.

7.-(1) The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury in an accident, all reasonable expenses to a maximum of \$500,000 per insured person incurred as a result of the accident within the benefit period set out in subsection (2) for,

- (a) necessary medical, surgical, dental, hospital, chiropractic, nursing and ambulance services;
- (b) necessary prostheses, dentures, prescription eyewear, hearing aids and other medical or dental devices;
- (c) necessary rehabilitation, life-skills training and occupational counselling and training;
- (d) transportation for the person to and from necessary treatment, counselling and training sessions, including transportation for an assistant if an assistant is necessary;
- (e) home renovations necessary to accommodate the needs of the insured person;
- (f) a reasonable allowance for expenses incurred by a family member in visiting the insured person during his or her treatment or recovery;
- (g) other necessary goods and services, whether medical or non-medical in nature, for the care of the insured person.

(2) For the purposes of subsection (1), the benefit period is the longer of the two following periods calculated from the day of the accident and ending on the anniversary of the accident:

1. Ten Years.

2. Twenty years less the age of the victim on the day of the accident.

(3) For the purposes of clause (1)(f), "family member" means a spouse, child, grandchild, parent, grandparent, brother or sister of the insured person.

(4) The insurer, before making a payment for an expense under clauses (1)(a) to (e) or (1)(g), may require the insured person to submit a statement signed by the insured person's medical advisor stating that the expense is necessary for the insured person's treatment or rehabilitation.

(5) In case of a dispute concerning the reasonableness of an expense described in clause (1)(a) or (b), the insurer will pay the expense pending resolution of the dispute.

(6) Despite subsection (1), the insurer will not pay any portion of an expense referred to in that subsection that is payable under any medical, surgical, dental or hospitalization plan or law or under any other insurance available to the insured.

8.-(1) The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury in an accident the expenses described in this section for the long term care, if any, required by the injured person.

(2) The insurer will pay,

(a) the cost of a professional caregiver or the amount of income lost by a person other than the insured person as a result of the accident in caring for the insured person; and

(b) all reasonable expenses incurred as a result of the accident in caring for the insured person after the accident.

(3) The maximum payable per month under this section is the lesser of \$1,500 or the monthly cost of a group residence appropriate to accommodate the needs of the insured person.

(4) The maximum payable under this section is \$500,000.

PART III

Death Benefits

9. The insurer will pay funeral expenses incurred up to \$3,000 with respect to each insured person who dies as a result of an accident.

10.-(1) If, as a result of an accident, an insured person dies within the benefit period set out in subsection (2), the insurer will pay with respect to the insured person,

(a) \$25,000 to his or her spouse, if the deceased is survived by a spouse who was his or her spouse at the time of the accident;

(b) \$25,000 to his or her dependants, if the deceased is survived by any dependant who was a dependant at the time of the accident and is not survived by a spouse who is entitled to a benefit under this section;

(c) \$10,000 to each of his or her surviving dependants who was a dependant at the time of the accident; and

(d) if, at the time of the accident, the deceased was a dependant, \$10,000,

- (i) to the person upon whom the deceased was dependent or if that person is dead, to the surviving spouse of that person if the surviving spouse was the deceased's primary caregiver, or
- (ii) to the other surviving dependants of the person upon whom the deceased was dependent if that person and his or her spouse are dead.

(2) For the purposes of subsection (1), the benefit period is,

- (a) 180 days from the day of the accident unless clause (b) applies; or
- (b) 156 weeks from the day of the accident if during that period there has been continuous disability as a result of the accident.

(3) If at the time of the accident the deceased person had more than one person entitled to claim as his or her spouse, the \$25,000 payment under clause (1)(a) will be divided equally between or among such persons who survive the deceased and who at the time of the death were still spouses of the deceased.

(4) The payments under clauses (1)(b) and (d) will be paid in equal shares to the surviving dependants.

(5) No amount is payable under subsection (1) to a spouse or dependant unless the spouse or dependant, as the case may be, survives the deceased by thirty days.

PART IV

Weekly Benefits

11.-(1) The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury in an accident a weekly income benefit during the period which the insured person suffers substantial inability to perform the essential tasks of his or her occupation or employment if the insured person meets the qualifications set out in subsection (2) or (3).

(2) The following qualifications apply to an insured person who claims weekly benefits under subsection (1):

- 1. He or she must have been at the time of the accident,
 - i. employed or self-employed at the time of the accident,
 - ii. on a temporary lay-off, or
 - iii. entitled to start work within one year under an unconditional written contract for employment.
- 2. He or she, as a result of and within two years of the accident, must have suffered a substantial inability to perform the essential tasks of his or her occupation or employment.

(3) A person who was unemployed and who was not self-employed at the time of the accident is qualified to receive weekly benefits under subsection (1) if he or she was employed or self-employed for any 180 days in the twelve-month period preceding the accident, and if he or she as a result of and

within ninety days of the accident has suffered a substantial inability to perform the essential tasks of the occupation or employment in which he or she spent the most time during that period.

(4) The weekly benefit under subsection (1) will be the lesser of,

- (a) \$450; and
- (b) 80 per cent of the insured person's gross weekly income from his or her occupation or employment to a minimum of \$185, less any payments for loss of income, except Unemployment Insurance benefits,
 - (i) received by or available to the insured person under the laws of any jurisdiction or under any income continuation benefit plan arising by reason of his or her occupation or employment or under a pension benefit plan, or
 - (ii) received under any sick leave plan arising by reason of his or her occupation or employment.

(5) An insurer is not required to pay a weekly benefit under subsection (1),

- (a) for the first week of the disability;
- (b) for any period in excess of 156 weeks unless it has been established that such injury continuously prevents the insured from engaging in any occupation or employment for which he or she is reasonably suited by education, training or experience.

(6) An insurer is not required to pay a weekly benefit under subsection (1) to a person described in subparagraph iii of paragraph 1 of subsection (2) until the day the person would have been entitled under the contract to begin employment unless before that day the person is qualified for a benefit under another paragraph of that subsection.

(7) The following rules apply to the calculation of gross weekly income:

1. A person's gross weekly income shall be deemed to be the greatest of,
 - i. his or her gross weekly income from his or her occupation or employment for the week preceding the accident,
 - ii. his or her average gross weekly income from his or her occupation or employment for the fifty-two weeks preceding the accident,
 - iii. \$185.
2. When a person becomes qualified to receive an income benefit under subparagraph iii of paragraph 1 of subsection (2), the person's gross weekly income shall be deemed to be the greatest of,
 - i. if the person was qualified under either subparagraph i or ii of paragraph 1 of subsection (2), his or her gross weekly income as determined under paragraph 1,
 - ii. the gross weekly income payable under the contract of employment,

iii. \$185.

3. Business expenses shall be deducted from a person's income before calculating his or her gross weekly income.

(8) The insurer will pay full benefits under this section until the insured person receives payments that would reduce the insurer's obligation through the operation of subsection (4) if the insured person has applied to receive the payments.

(9) The insurer will pay full benefits under this section pending the settlement of any dispute as to the entitlement of the insured person to receive any payments described in clause (4)(b) that would reduce the insurer's obligations.

(10) The insured person will reimburse the insurer for any overpayments that result from the operation of subsection (8) or (9).

12.-(1) The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury in an accident, a weekly benefit of \$185 during the period which the insured is unable to perform all or substantially all of his or her activities if the insured person meets the qualifications set out in subsection (2).

(2) The following qualifications apply to an insured person who claims weekly benefits under subsection (1):

1. He or she as a result of and within two years of the accident must be unable to perform all or substantially all of his or her normal activities.
2. He or she must not be entitled to receive a benefit under section 11 at the time of the payment of a benefit under this section.
3. He or she must attain the age of 16 years before making a claim for the weekly benefit.

(3) An insurer is not required to pay a weekly benefit under this section,

- (a) for the first week of the disability;
- (b) for any period in excess of 156 weeks unless it has been established that such injury continuously prevents the insured person from engaging in all or substantially all of the activities in which the person would normally engage.

(4) The insurer will pay to an insured person who is receiving a weekly benefit under subsection (1) an additional benefit of \$50 per week for each person who at the time of the accident was residing with the insured person and in respect of whom the insured person was the primary caregiver if the person receiving the care was less than sixteen years of age or if the person required the care because of physical or mental incapacity.

(5) The maximum additional benefit payable under subsection (4) is \$200 per week.

(6) An additional weekly benefit under subsection (4) ceases,

- (a) when the person cared for attains age sixteen, unless he or she is incapacitated;
- (b) when the incapacity of the person cared for ceases;
- (c) when the insured ceases to be eligible for a benefit under subsection (1).

13. An insurer may deduct from any benefit payable under this Part any payment received or available from any occupation or employment subsequent to the accident.

14. Subject to section 13, a person receiving an income benefit under section 11 or 12 may attend school or accept, or return to, an occupation or employment for periods of up to ninety days without affecting his or her benefits under this Part if he or she, as a result of the injury, is unable to continue at school or in the occupation or employment.

15. An insurer is not required to pay benefits under this Part in respect of the driver of the automobile at the time of the accident,

- (a) if, as a result of the accident, the driver is convicted of operating the automobile while his or her ability to operate the automobile was impaired by alcohol or a drug, of failure to give a breath sample or of driving while his or her blood alcohol level exceeded the limits permitted by law;
- (b) if, as a result of the accident, the driver is convicted of operating the vehicle while it was not insured under a contract evidenced by a motor vehicle liability policy;
- (c) if the driver was neither authorized by law nor qualified to drive the motor vehicle;
- (d) if the driver is an excluded driver under the contract of insurance; or
- (e) if the driver knew or ought reasonably to have known that he or she was operating the motor vehicle at the time of the accident without the owner's consent.

16. The insurer is not required to pay benefits under this Part in respect of any person who has made, or who knows of, a material misrepresentation which induced the insurer to enter into the contract of insurance or who intentionally failed to notify the insurer of a change in the risk material to the contract.

PART V

Accidents in Quebec

17. The insurer will pay with respect to a person insured in Quebec who sustains physical, psychological or mental injury in an accident in Quebec or who incurs a cost described in section 6, as the person may elect,

- (a) benefits as provided in Part II (Supplementary Medical, Rehabilitation and Long Term Care Benefits), Part III (Death Benefits) and Part IV (Weekly Benefits); or
- (b) benefits in the same amounts and subject to the same conditions as if the person was a resident of Quebec (as defined in the Automobile Insurance Act (Quebec) and the regulations made under that Act) and was entitled to payments under that Act and those regulations.

18. A person who elects to claim a benefit as provided in clause 17(a) is thereafter eligible only for benefits under Parts II, III and IV.

19. A person who elects to claim a benefit as provided in clause 17(b) is thereafter ineligible for benefits under Parts II, III and IV.

20. For the purposes of this Part, a person is insured in Quebec, if the person at the time of the accident,

- (a) was authorized by law to be or to remain in Canada and was living and ordinarily present in Ontario;
- (b) met the criteria prescribed in Division II of O.C. 374-78 made under the Automobile Insurance Act (Quebec);
- (c) was not the owner or driver of, or an occupant of an automobile registered in Quebec; and
- (d) was,
 - (i) an occupant of the insured automobile,
 - (ii) the named insured, his or her spouse or a dependant of either of them while the occupant of any other automobile,
 - (iii) a person who was not the occupant of an automobile and was struck by the insured automobile,
 - (iv) the named insured, his or her spouse or a dependant of either of them and was struck by any other automobile,
 - (v) if the named insured is a corporation, unincorporated association, partnership or sole proprietorship, any person for whose regular use the insured automobile was supplied, the person's spouse and any dependant of either of them who was injured,
 - (A) while the occupant of any other automobile,
 - (B) by any other automobile while not the occupant of the automobile, or
 - (vi) a person struck by an automobile that was driven by a person described in subclause (i), (ii) or (v).

PART VI

Miscellaneous

21. The insurer will not pay benefits under this Schedule in respect of any person who is entitled to receive the benefits of any workers' compensation law or plan unless the benefits arise under Part V (Accidents in Quebec).

22.-(1) The insured person or the person otherwise entitled to make a claim, or an agent for either, shall,

- (a) give written notice of a claim by personal delivery or by registered mail to the insurer's chief agency or head office in Ontario, within thirty days from the date of the accident, or as soon as practicable thereafter;
- (b) furnish to the insurer within ninety days of the accident such proof of claim as is reasonably possible respecting the accident and the resulting loss; and

- (c) if so required by the insurer, furnish a certificate from a duly qualified medical practitioner as to the cause and nature of the injury for which the claim is made and the probable duration of the disability caused by the accident, and the need for rehabilitation.

(2) A claim is not invalidated only by reason of a failure to comply with a time limit set out in subsection (1) if it is shown that it was not reasonably possible to comply with the time limit and so long as there is compliance within two years of the accident.

23. The insurer has the right, on reasonable notice, to require a physical or mental examination of the insured person by a duly qualified medical practitioner or chiropractor as often as it reasonably requires, and to require an autopsy of a deceased insured person in accordance with the law relating to autopsies.

24.-(1) Amounts payable under Parts II and III are overdue if not paid by the insurer within thirty days after it has received proof of a legitimate claim.

(2) Amounts payable under Parts IV and V are overdue if not paid by the insurer within ten days after it has received proof of a legitimate claim.

(3) Payments under Parts IV and V shall be made every week while the insurer remains liable to the insured person, if the insured person furnishes proof of continuing disability within a reasonable time whenever reasonably required to do so.

(4) The insurer will pay interest on overdue payments from the date they become overdue at double the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which this payment was due, rounded to the next highest whole number if the bank rate includes a fraction.

(5) In subsection (4), "bank rate" means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to the banks listed in Schedule A to the Bank Act (Canada).

25. No person may bring an action to recover the amount of any benefits under this Schedule unless the requirements of section 22 have been satisfied and the insured person has complied with the insurer's requirements under section 23.

26. An action to recover the amount of any benefits under this Schedule must be commenced within two years from the insurer's refusal to pay the amount claimed in the proof of claim or, if the person has attended school or accepted, or returned to, an occupation or employment, as permitted by section 14, within two years of the insurer's refusal to pay further benefits.

